

U.S. Fish and Wildlife Serv., Interior

§ 80.125

(ii) Donations of services, personal property, or real property unrelated to a Federal grant.

(b) Examples of costs of generating program income that may qualify for deduction from gross income if they are consistent with paragraph (a) of this section are:

(1) Cost of estimating the amount of commercially acceptable timber in a forest and marking it for harvest if the commercial harvest is incidental to a grant-funded habitat-management or facilities-construction project.

(2) Cost of publishing research results as a pamphlet or book for sale if the publication is incidental to a grant-funded research project.

§ 80.123 How may an agency use program income?

(a) A State fish and wildlife agency may choose any of the three methods listed in paragraph (b) of this section for applying program income to Federal and non-Federal outlays. The agency may also use a combination of these methods. The method or methods that the agency chooses will apply to the program income that it earns during the grant period and to the program income that any subgrantee earns during the grant period. The agency must indicate the method that it wants to use in the project statement that it submits with each application for Federal assistance.

(b) The three methods for applying program income to Federal and non-Federal outlays are in the following table:

Method	Requirements for using the method
(1) Deduction	<p>(i) The agency must deduct the program income from total allowable costs to determine the net allowable costs.</p> <p>(ii) The agency must use program income for current costs under the grant unless the Regional Director authorizes otherwise.</p> <p>(iii) If the agency does not indicate the method that it wants to use in the project statement, then it must use the deduction method.</p>
(2) Addition	<p>(i) The agency may add the program income to the Federal and matching funds under the grant.</p> <p>(ii) The agency must use the program income for the purposes of the grant and under the terms of the grant.</p>
(3) Matching	<p>(i) The agency must request the Regional Director's approval in the project statement.</p> <p>(ii) The agency must explain in the project statement how the agency proposes to use the program income, the expected results, and why it is essential to use program income as match.</p> <p>(iii) The Regional Director may approve the use of the matching method if the requirements of paragraph (c) of this section are met.</p>

(c) The Regional Director may approve the use of the matching method if the proposed use of the program income would:

(1) Be consistent with the intent of the applicable Act or Acts; and

(2) Result in at least one of the following:

(i) The agency substitutes program income for at least some of the match that it would otherwise have to provide, and then uses this saved match for other fish or wildlife-related projects;

(ii) The agency substitutes program income for at least some of the apportioned Federal funds, and then uses the saved Federal funds for additional eligible activities under the program; or

(iii) A net benefit to the program.

§ 80.124 How may an agency use unexpended program income?

If a State fish and wildlife agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent grant for any activity eligible for funding in the grant program that generated the income.

§ 80.125 How must an agency treat income that it earns after the grant period?

(a) The State fish and wildlife agency must treat program income that it earns after the grant period as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the grant or the program.

(b) The agency must indicate its choice of one of the alternatives in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the grant period as license revenue.

§ 80.126 How must an agency treat income earned by a subgrantee after the grant period?

(a) The State fish and wildlife agency must treat income earned by a subgrantee after the grant period as:

(1) License revenue for the administration of the agency;

(2) Additional funding for purposes consistent with the grant or the program; or

(3) Income subject only to the terms of the subgrant agreement and any subsequent contractual agreements between the agency and the subgrantee.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that it submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subgrantee does not have to account for any income that it earns after the grant period unless required to do so in the subgrant agreement or in any subsequent contractual agreement.

Subpart J—Real Property

§ 80.130 Does an agency have to hold title to real property acquired under a grant?

A State fish and wildlife agency must hold title to an ownership interest in real property acquired under a grant to the extent possible under State law.

(a) Some States do not authorize their fish and wildlife agency to hold the title to real property that the agency manages. In these cases, the State or one of its administrative units may hold the title to grant-funded real property as long as the agency has the authority to manage the real property for its authorized purpose under the grant. The agency, the State, or another administrative unit of State gov-

ernment must not hold title to an undivided ownership interest in the real property concurrently with a subgrantee or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Ownership interests include fee and leasehold interests but not easements.

§ 80.131 Does an agency have to hold an easement acquired under a grant?

A State fish and wildlife agency must hold an easement acquired under a grant, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share holding or enforcement of an easement only in the following situations:

(1) The State or another administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may subgrant the concurrent right to hold the easement to a nonprofit organization or to a local or tribal government. A concurrent right to hold an easement means that both the State agency and the subgrantee hold the easement and share its rights and responsibilities.

(3) The agency may subgrant a right of enforcement to a nonprofit organization or to a local or tribal government. This right of enforcement may allow the subgrantee to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subgrantee's right of enforcement must not supersede and must be concurrent with the agency's right of enforcement.

§ 80.132 Does an agency have to control the land or water where it completes capital improvements?

Yes. A State fish and wildlife agency must control the parcel of land and water on which it completes a grant-